BAIL SLIP

The Petitioner Accused namely K.Balan was directed to be released on bail as per the order of this Honourable Court in Crl.M.P.No.9177/04 in Crl.R.C.No.1464/04 dated 31.8.2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1464 of 2004

K.Balan .. Petitioner

vs.

The Inspector of Police,
CB CID, Chennai. .. Respondent

Prayer: This Revision petition has been preferred against judgment dated 13.8.2003 made in C.A.No.114 of 2002 on the file of the Additional Sessions Judge, (FTC-IV), Chennai, confirming the judgment in C.C.No.8430 of 1995 on the file of the II Metropolitan Magistrate, Egmore, Chennai, dated 03.05.2002.

For Petitioner : Mr.M.S.Soundararajan
For Respondent : Mr.V.R.Balasubramanian,
Additional Public Prosecutor.

JUDGMENT

This revision petition arises out of the judgment in C.A.No.114 of 2003 on the file of the Additional Sessions Judge, (FTC-IV), Chennai, under which the judgment in C.C.No.8430 of 1995 on the file of the IInd Metropolitan Magistrate, Egmore, Chennai, was confirmed. The accused was charged under Section 120-B and 222(3) IPC along with seven co-accused.

2. The trial Court after taking cognizance of the charges levelled against the accused, furnished the copies to the accused under Section 207 of Cr.P.C., on their appearance on summons. After framing charges when questioned, the accused pleaded not guilty. Before the trial Court P.W.1

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to P.W.26 were examined and Ex.P.1 to Ex.P.10 were exhibited.

3. The case of the prosecution in brief is that in the month of August 1990 this accused along with other co-accused conspired in assisting the accused Shankar @ Auto Shanker (who was subsequently been executed) and A4 to A8 who are the associates of the above said executed accused Auto Shankar to make good their escape from the central prison and this accused who is ranked A5 an ex-employee of the central prison along with his colleagues A4 and A6 facilitated A1 to A3 to make good their escape from the central prison. Hence this accused was charged under Sections 120-B and 222(3) IPC along with the co-accused.

4.P.W.1 is the then Superintendent of central prison, who would depsoe that on 20.8.1990 night about 5 inmates of the central prison, who were lodged in first block make good their escape from the prison with the help of A5 to A7, the jail warders.

5.P.W.2, the then Additional Superintendent of Central Prison also corroborated the evidence of P.W.1. The specific averment against this accused/revision petitioner by P.W.2 is that this accused Balan(A5) was incharge of supervising the lockup in which the escaped prisoners were lodged on the day of occurrence. He has also deposed to the effect that when roll call was taken on 21.8.1990 at about 6.00 am it was brought to the notice that A1, A2, Auto Shankar (deceased), Advocate Raja and Sundal Kumar had escaped from the jail and that he has informed this fact to P.W.1, who had preferred Ex.P.1-complaint with the Chindadaripet police.

6.P.W.3 is the then warder of the central prison. He would depose that except cell No.10 in the first block all the inmates of other cells in the said block were present at the time of roll call and the lock of the 10th cell was found unlocked and five of the inmates from the said cell were found missing.

7.P.W.4 is then II grade warder of central prison, who has also corroborated the evidence of P.W.1 and P.W.2.

8.P.W.5 is the then Grade-I Head Constable. According to him he was on guard duty in the central cell in which "Elam Liberation Tigers" were lodged from 6.00 pm to 9.00 pm on 20.8.1990 and that he left the prison after handing over the charge to his successor and he returned to duty only on 21.8.1990 in the morning and came to know that five of the inmates from cell No.10 make good their escape from the prison.

9.P.W.6 & P.W.7 have also corroborated the evidence of P.W.5.

10.P.W.8 is the then Grade-I prison constable. According to him, he was on duty from 11.00 pm on 20.8.1990 till 12.00 mid night. He had locked the locks in order to prevent political remand prisoners from entering into the said block and at that time when he took roll call of the political prisoners on the following morning at about 6.30 am he was informed that 5 inmates including Auto Shankar from cell No.10 had escaped

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from the prison.

11. P.W.9 is the Grade-II constable in the prison department, who on 20.8.1990 was on duty from 12.00 mid night till 6.00 am in the morning on the tower of the prison. According to him, since the outer gate of block No.I was kept under lock and key he could not enter into the block No.I and only in the morning he came to know that the inmates from cell No.10 in block No.1 have escaped from the cell.

12.P.W.10 would depose that on 20.8.1990 the outer gate in block No.I was locked as per the instructions of Chief Head warden Rahim Khan.

13.P.W.11 is the then deputy warden of central prison. According to him, he used to take roll call of the inmates of the prison and accordingly on 20.8.1990 also at about 5.30 am he verified the inmates of the prison at block No.I and that he was on duty till 1.00 pm on 20.8.1990 and when he came for the next shift at about 10.00 pm on the same day he found the outer gate of the first block was kept under lock and key under the instructions of the head warden Rahim Kahn and that his duty was over at about 12.00 mid night and till such time no untoward things had happened in the prison and only on 21.8.1990 morning he came to know that 5 of the inmates from cell No.10 make good their escape from the prison.

14.P.W.12 was the then gate keeper of the central prison and that he was on duty from 5.45 am to 10.00 pm on 20.8.1990 and only on the next day i.e., on 21.8.1990 he came to know that 5 of the inmates of the prison have escaped.

15.P.W.13 to P.W.16 have not supported the case of the prosecution. Hence they were treated as hostile witnesses.

16.P.W.17 would depose that 10 years ago the accused Venkatesan along which his sister came to his house and stayed for the night.

17.P.W.18 is the Sub-Inspector of Police of Orisa state. He would depose that during the month of October-1990 the Inspector of Police, CB CID, Madras had enquired him about the escape of one Auto Shankar @ Gowri Shanker from the central prison, Chennai and as per the request of the Inspector of Police CB CID, he along with his senior Inspector conducted a raid in the place where Auto Shankar was stayed with his mother (Gopavanthu Nagar). At that time the accused Auto Shankar was not there and on 1.9.1990 at about 6.00 pm on the information from the reliable source he came to note that the said accused Auto Shankar had come to his father's house. Immediately he along with his senior Sub-Inspector Mr.Mishra along with his colleagues raided the place where Auto Shankar was staying and caught hold of the accused Auto Shankar. At that time Auto Shankar's wife Devi was also present along with her husband. Both of them were arrested by his senior Sub-Inspector Mr.Mishra. The Inspector of Police CB CID have also informed about the arrest of Auto

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Shankar and his wife Devi. Both the accused were produced befrore the Sub-Divisional Judicial Magistrate, Panpur, for judicial custody. Later both the accused were taken to Madras by the Madras Police.

18.P.W.19 speaks about the arrest of the accused Srinivasan by CB CID Police at Bombay.

19. P.W.20 is the proprietor of hotel viz Samrat at Pune, who would depose that during the month of April 1992 two persons calling themselves as Divakar and Venkatesan approached in search of a job and that he has offered them the work of table boy and that both of them worked under him for nearly three months and on one fine morning Tamil Nadu Police came to his hotel and arrested both of them.

20.P.W.21 is a retired railway employee. According to him, the accused Divakar and Venkatesan were known to him and that in the year 1992 both A1 and A8 were residing in his house as tenant for nearly three months and that Tamil Nadu Police arrested both of them.

21.P.W.22 is the Additional Superintendent of Police Tiruvanamalai. While he was working as an Inspector of Police CB CID on 25.1.1992 he went to Pune along with his party on the information that the escaped inmates of central prison Mohan and Venkatesan were working in a hotel at Pune, and arrested A1-Divakar @ Mohan and also Venkatesan (A8) and brought them to Chennai and produced before the XIVth Metropolitan Magistrate for remand.

22.P.W.23 is the Additional Superintendent of State Crime Branch, who had registered the case under Cr.No.138 & 139 of 2000 of Chindadaripet Police Station under Section 222, 224 & 225 IPC. He has also received the other co-accused viz., Auto Shankar and his wife Devi from Rupkela Police and produced them before the XIVth Metropolitan Magistrate for the purpose of remand.

23.P.W.24 is the successor of P.W.23 who took up the investigation in this case and examined the witness and recorded their statements.

24.P.W.25 had continued the investigation after P.W.24 and examined the other witnesses and recorded their statements.

25.P.W.26 is the successor of P.W.25, who had examined the remaining witnesses and recorded their statements and after completing the investigation has filed the charge sheet against the accused on 28.12.1994.

26. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., they denied their complicity with the crime. On the basis of the available oral and documentary evidence the learned trial judge has come to the conclusion that the guilt against the accused has been proved beyond any reasonable doubt and accordingly convicted and

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sentenced to undergo 6 months RI under Section 120-B IPC and another 6 months RI under Section 222(3) IPC with a direction that both the sentences shall run concurrently.

27. Aggrieved by the findings of the learned trial Judge, the accused-5 has preferred an appeal in C.A.No.114 of 2002 before the Additional District & Sessions Judge, (FTC-IV), Coimbatore, who after careful consideration of the available evidence both oral and documentary and also after going through the judgment of the learned trial Judge, has held that there is no reason to interfere with the findings of the learned trial judge and accordingly dismissed the appeal thereby confirmed the judgment of the trial Court, which necessitated the accused(A5) to prefer this revision petition.

28.Now the point for determination in this revision petition is whether the judgments of the Courts below holding that the accused is guilty under Section 120-B and 222(3) IPC is liable to be set aside for the reasons stated in the memorandum of revision?

29.The Point:-

29(a) The learned counsel for the revision petitioner would contend that after the occurrence the government have appointed an Enquiry Commission and the learned Judge who presided over the commission has filed a report holding that this accused Thiru.Balan is no way connected with the occurrence. But the said report of the enquiry commission was not filed before the trial Court. Only an extract of the report of the Enquiry Commission relating to A6 was filed along with the type set of papers. In this regard it should be remembered that a document which was not produced before the trial Court cannot be looked into by this Court. Even the original of the enquiry report was not produced before this Court.

29(b) The specific charge against this revision petitioner/A5 is that he had not properly discharged his duty while he was on duty on 20.8.1990 and he has failed to lock the door of the cell No.10 where the escapee accused/under trial prisoners were lodged. In this regard the evidence of P.W.2 Thiru.Munivelu, then Additional Superintendent of Prison, is relevant to be noted. In specific terms P.W.2 has deposed that this revision petitioner Balan was entrusted with the duty of checking the lockup in which the escapee accused were lodged on the day of occurrence. It is pertinent to note that P.W.2 Thiru.Munevelu was not cross-examined by this revision petitioner before the trial Court. Under such circumstances, the evidence of P.W.2 against his accused remains unchallanged.

29(c) The learned counsel for the revision petitioner relying on the evidence of P.W.3 would contend that the block No.1 which comprises cell NO.10 in which the escapee prisoners were lodged itself was locked as per the instructions of the Head Warden Rahim Kahan (A7). But P.W.3 himself

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would depose that cell NO.10 was found open on 21.8.1990 at about 6.00 am. Even though this accused is not in-charge of the other cells it is in evidence that he was incharge of cell No.10 where the escapee accused were lodged on the previous night to the occurrence day. It is in evidence that from 5.30 am to 1.00 pm and 3.30 pm to 10.30 pm on 20.8.1990 this accused on duty.

29(d) When the incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he had denied his complicity with the crime and has examined himself as D.W.1. The revision petitioner as D.W.1 would admit in the cross-examination that he was on duty till 9.30 pm on 20.8.1990 and that 5 prisoners were lockedup in cell NO.10 at about 8.45 pm on the same day in his presence. He would further admit that on the next day morning he came to know that the above said 5 prisoners successfully escaped from the prison. He has not deposed before the Court that before he left the duty he checked the lock of the cell No.10 to ensure that 5 inmates of cell No.10 were safely lodged under lock. In the cross-examination he will go to the extent of saying that he does not know whether 5 inmates who were lodged in prison in his presence, were murder case accused or not. In defence the revision petitioner has not let in any evidence to show that at the time when he left his duty, cell No.10 was safely locked with 5 inmates therein. It is not the case of the prosecution that on the morning on 21.8.1990 the lock of cell No.10 was found broken. But it is the case of the prosecution that lock of cell NO.10 was not properly locked. Only under such circumstances, both the Courts below have come to the conclusion that only due to the negligent act of the revision petitioner the lock of cell No.10 was not kept properly locked, which enabled the inmates of cell No.10 to escape from the prison on the early morning of 21.8.1990. Out of 5 escapee prisoners 3 of them including Auto Shankar were executed.

29(e) The learned counsel for the revision petitioner relying on Ex.D.1-orders of the prison authorities would contend that the revision petitioner was allowed to retire even after this occurrence with out any departmental enquiry. But that is not the ground to acquit the accused from the charges levelled against him. So I am of the view that there is no reason to interfere with the will considered judgments of the Court below for coming to the conclusion that the charges under Section 120-B and 222(3) IPC have been proved against this accused beyond any reasonable doubt. At this juncture the learned counsel for the revision petitioner would contend that now the revision petitioner is aged 72 years and it is not fair to send him to the prison once again. The learned Additional Public Prosecutor would represent that the accused was in jail for nearly one months during remand period and also after the conviction by the trial Court. So taking into consideration the age factor of the revision petitioner I am of the view that instead of sending the revision petitioner to prison, it will be sufficient that the sentence alone can be modified to that of the period already undergone instead of 6 months RI. Point is answered accordingly.

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30. In the result, the revision petition is dismissed confirming the conviction rendered by the first appellate Court in C.A.No.114 of 2002 on the file of the Additional District & Sessions Judge, (FTC-IV), Chennai, but the sentence alone is modified to that of the period already undergone instead of 6 months RI.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The II Metropolitan Magistrate, Egmore, Chennai.

2.-do- through The Chief Metropolitan Magistrate, Egmore, Chennai.

3.The Additional District and Sessions Judge,
(FTC.IV), Chennai.

4.-do- through The Principal Sessions Judge,
Chennai.

5.The Inspector of Police, CB CID, Chennai.

6.The Superintendent of Police, Central Prison,
Vellore.

7.The Public Prosecutor, High Court, Madras.

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